

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADAM JOSHUA FEELEY, et al. : CIVIL ACTION  
: :  
v. : :  
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: :  
: :  
SUNTRUST BANK, et al. : NO. 12-4522

MEMORANDUM

McLaughlin, J.

February 19, 2013

This case arises out of securities transactions made by defendants William Crafton, Jr. and Martin Kelly Capital Management, LLC (MKCM) on behalf of the plaintiffs, their former clients. The plaintiffs allege that these transactions breached their contractual relationship with the defendants and violated Sections 10(b) and 20(a) of the Securities Exchange Act. The defendants have moved to compel arbitration, or, in the alternative, to dismiss the case. The Court grants the defendants' motion to compel arbitration. Because it need not decide the defendants' motions to dismiss at this time, it denies those portions of the motions without prejudice. This matter is stayed pending further order from the Court.

I. Factual and Procedural Background<sup>1</sup>

The plaintiffs, current or former professional athletes, engaged the financial services of defendant William Crafton, Jr., sometime in or around 2006-07. At that time, Mr. Crafton was employed at defendant Martin Kelly Capital Management, LLC (MKCM). In approximately December 2009, MKCM was purchased by defendant SunTrust Bank, and Mr. Crafton was announced as head of SunTrust's office in San Diego, CA. Compl. ¶ 11-15.

Around August 2010, the plaintiffs became aware that the Securities and Exchange Commission (SEC) was investigating the Westmoore Fund, a fund in which Mr. Crafton had made major investments on the plaintiffs' behalf. Around the same time, the plaintiffs were made aware that their investments were "essentially worthless." Mr. Crafton's position at SunTrust was terminated around February 2011. Id. ¶ 44-47.

The plaintiffs filed their complaint in federal court on August 9, 2012. They alleged that throughout the course of their relationship, Mr. Crafton misrepresented the types of

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<sup>1</sup> The facts above are taken from the plaintiffs' complaint and from the parties' moving papers and attached exhibits. In deciding a motion to compel arbitration, the Court gives the party opposing arbitration "the benefit of all reasonable doubts and inferences that may arise." Kaneff v. Del. Title Loans, Inc., 587 F.3d 616, 620 (3d Cir. 2009).

investments he made on their behalf. Contrary to his representations, he made investments in high-risk, alternative fields, "which were Ponzi schemes or other fraudulent investments run, managed, controlled, operated and/or created by individuals with whom Crafton had a personal relationship, business dealings or kick-back agreements." As a result, plaintiffs seek from the defendants the full amount of their investment and fees paid out to Mr. Crafton, plus compensatory and punitive damages. Id. ¶ 31, 142.

The defendants Crafton, MKCM, and SunTrust have submitted near-identical motions to compel arbitration, or, in the alternative, to dismiss. Docket Nos. 6 (SunTrust), 7 (Crafton and MKCM). The evidence the parties have submitted with regard to the motions to compel arbitration are described below.

A. Documents Regarding Client Engagement

First, the defendants have attached a copy of executory agreements between MKCM and plaintiffs Feeley, Celek, and Curtis. Def. Crafton Mot. to Compel, exh. 4-6 (Docket No. 7). These agreements existed in two forms: Mr. Celek entered into a "client engagement agreement" and Mr. Feeley and Curtis entered into "financial services agreements" (henceforth known

collectively as "services agreements"). Each agreement included a signature of the named plaintiff, and each contained an identical "Arbitration Provision," providing in relevant part "that any controversy between the Adviser and the Client arising out of Adviser business or this agreement, shall be submitted to arbitration conducted under the provisions of the commercial arbitration rules of the American Arbitration Association."<sup>2</sup> Id. The arbitration provision is located on the same page as the three plaintiffs' signatures. There is no copy of any services agreement between Mr. Crafton and the fourth plaintiff, Heather Mitts, in the record in front of the Court.

In addition to the services agreements described above, defendant SunTrust also offer as exhibits four letters dated October 26, 2009, entitled "Re: Transaction with SunTrust Bank," which were sent by Mr. Crafton on behalf of MKCM to all four

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<sup>2</sup> It further provides that "[a]rbitration must be commenced by service upon the other party of a written demand for arbitration or a written notice of intention to arbitrate, therein electing the arbitration tribunal. In the event the client does not make such election within five (5) days of such demand or notice, then the Client authorizes the Adviser to do so on the Client's behalf. Judgment upon any award rendered by the arbitrators shall be final and may be entered in any court having jurisdiction thereof. This clause does not constitute a waiver of any right including the right to choose the forum, whether arbitration or adjudication, in which to seek resolution of disputes." Id.

plaintiffs. Def. SunTrust Mot. at exh. B (Docket No. 6-1). These letters state that "by signing below, you[] consent to the assignment of your client engagement letter to SunTrust." Id. at 2. On the same page as the language regarding the assignment of the client engagement agreements to SunTrust, all four letters are signed by the plaintiffs.

B. Certification of William Crafton

The defendants have also provided the certification of Mr. Crafton, which states his understanding as to the services agreements. Crafton Cert. (Docket No. 19). In this certification, Mr. Crafton stated that it was protocol to execute services agreements describing the company's investment services and fee structures. Id. ¶ 4-5. He further stated that "MKCM would not have provided investment-related services without an executed Agreement." Id. ¶ 5. Mr. Crafton recalls that in accordance with standard client procedure, all four plaintiffs executed services agreements with MKCM. Id. ¶ 3-4. He stated that Mr. Feeley's and Mr. Celek's agreements were executed in his presence and Mr. Curtis mailed his copy to him. Id. ¶ 6, 8-9. Mr. Crafton did not have Ms. Mitts' agreement in

his possession and had no further recollection other than it being signed. Id. ¶ 7.

C. Certification of Adam Fein

The plaintiffs have provided the certification of Adam Fein, a client manager at MKCM and SunTrust and employee of Mr. Crafton. Pl. Opp., exh. A (Docket No. 15). Mr. Fein stated that Mr. Crafton "routinely instructed . . . members of his staff to use scanned images of [a] player's signatures and apply it onto documents that the player had never seen, read, or actually signed." Id. ¶ 7. Mr. Fein offered further clarification that "[m]ost of Billy's clients had client engagement agreements and SunTrust did require them to fill out engagement letters." Id. ¶ 13.

II. Analysis

The defendants have moved to compel arbitration based on the two sets of correspondences described above: 1) the client services agreement, and 2) the assignment of such agreements to SunTrust Bank.

By federal statute, arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at

law or in equity for the revocation of any contract." 9 U.S.C. § 2. In the Third Circuit, a district court deciding whether to compel arbitration must determine that a valid agreement to arbitrate exists and that the particular dispute falls within the scope of the agreement. Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 160 (3d Cir. 2009). The Court makes such a determination under a summary judgment standard, giving the party opposing the motion the benefit of all reasonable doubts and appropriate inferences.<sup>3</sup> Kaneff v. Del. Title Loans, Inc., 587 F.3d 616, 620 (3d Cir. 2009).

To determine whether there is a valid agreement to arbitrate, the district court considers "ordinary state-law principles that govern the formation of contracts." Kirleis, 560 F.3d at 160. General contract defenses, such as fraud, duress, or unconscionability, may apply. Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 687 (1996).

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<sup>3</sup> Under the summary judgment standard, the Court considers the parties' arguments that are supported by facts in the record, including evidence set forth in affidavits or declarations. E.g., El v. SEPTA, 479 F.3d 232, 238 (3d. Cir. 2007). In making this determination, a court may, but is not required, to order discovery or schedule an evidentiary hearing. See, e.g., Wolff v. Westwood Mgmt., LLC, 558 F.3d 517, 521 (D.C. Cir. 2009); Ameriprise Fin. Servs., Inc. v. Etheredge, 277 Fed. Appx. 447, 449 (5th Cir. 2008).

Pointing to Mr. Fein's certification and to the arguments made in their opposition briefs, the plaintiffs dispute the existence and authenticity of the services agreements. After considering all of the evidence on the record, the Court is satisfied as to the authenticity of the services agreements. The Court holds that there is no genuine issue that the services agreements existed, and that these agreements detailed the binding arbitration in the event of contractual disputes and were signed by the plaintiffs.

The Court's analysis relies upon the documents themselves as well as the certifications regarding the documents. The defendants have provided copies of three<sup>4</sup> of the four services

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<sup>4</sup> With regard to the plaintiff Ms. Mitts, the defendants have not provided a copy of any services agreement signed by her. However, Ms. Mitts has not filed any sworn testimony stating that she did not sign such an agreement. Moreover, the complaint alleges that she, along with the plaintiffs, "enter[ed] into a contract," resulting in a "contractual relationship" between plaintiffs and defendants (and a subsequent breach of these relationships). Compl. ¶ 108-110. The "contract" for the other three plaintiffs each includes this arbitration provision, and Mr. Crafton stated in his certification that this contract is a standard and essential part of the formation of an investment-related relationship. Crafton Cert. ¶ 4-5. He has also stated that Ms. Mitts executed this agreement, but he does not have it in his possession.

Courts have held that signed copies of arbitration agreements are not necessary to compel enforcement, so long as there is sufficient alternative evidence in the record as to the

agreements signed by Mr. Feeley, Mr. Celek, and Mr. Curtis. The agreements have distinct signatures affixed on the bottom, and the Arbitration Provision is delineated almost directly above the signatures. This format (the signature directly under disputed language) is also observed in the 10/26/09 agreements assigning the plaintiffs' rights to SunTrust Bank.

In addition, Mr. Crafton has provided a certification stating not only that such agreements were executed by the plaintiffs, but that such agreements are standard protocol for MKCM's client relationships. The Court is persuaded by Mr. Crafton's explanation that because the agreement describes the fee structure for the financial relationship and other important provisions, "MKCM would not have provided investment-related services without an executed Agreement." Crafton Cert. ¶ 5.

In their brief in opposition, the plaintiffs deny signing any service agreements. Notably, however, the plaintiffs did

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terms and conditions of the agreement. See, e.g., Banks v. Mitsubishi Motors Credit of Am., 435 F.3d 538, 539-40 (5th Cir. 2005); Clerk v. ACE Cash Express, Inc., No. 09-5117, 2010 WL 364450, at \*2, n.2 (E.D. Pa. Jan. 29, 2010)). Because Ms. Mitts' allegations in her complaint stem from a contractual relationship with Mr. Crafton, and because she has not presented any evidence that she did not sign the services agreement signed by the other three, the Court does not consider the absence of her agreement to distinguish her position from those of the other three plaintiffs.

not provide any of their own sworn testimony, in a certification or deposition, stating that they did not sign the agreements or otherwise disputing the authenticity of these agreements. A party cannot rest only on assertions and statements made in its briefs without making reference to facts in the record. El v. SEPTA, 479 F.3d at 238; see also Pastore v. Bell Tel. Co. of Pa., 24 F.3d 508, 511 (3d. Cir. 1994) ("Once the moving party has carried the initial burden of showing that no genuine issue of material fact exists, the nonmoving party cannot rely upon conclusory allegations in its pleadings or in memoranda and briefs to establish a genuine issue of material fact."). Without an affidavit or other form of sworn testimony from the plaintiffs or another party with knowledge stating to this effect, the Court does not find any genuine issue of material fact. See, e.g., Black v. JP Morgan Chase & Co., No. 10-848, 2011 WL 3940236, at \*5 (W.D. Pa. Aug. 25, 2011).

Even taken in the light most favorable to the plaintiffs, Mr. Fein's certification provides no genuine issue as to the authenticity of the services agreements. Mr. Fein stated that Mr. Crafton had in some instances instructed his staff to falsify signatures, but he does not refer to any documents signed by these particular plaintiffs, and certainly makes no

reference to the services agreements at issue. In fact, Mr. Fein also stated that “[m]ost of Billy’s clients had client engagement agreements and SunTrust did require them to fill out engagement letters.” Fein Cert. ¶ 13. Such language seems to exclude engagement agreements from his allegations of falsification. Therefore, the Court holds that the plaintiffs have not submitted sufficient evidence in support of their position.

Further, the Court does not see any reason to hold an evidentiary hearing on the issue of authenticity. The plaintiffs’ position, as stated in their filing papers and in their opposition to these motions, is that they do not recall signing the services agreements. See, e.g., Pl. Opp. at 5, 27. It is doubtful that the plaintiffs would be able to introduce any fact of relevance to the Court.<sup>5</sup> Moreover, the evidentiary

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<sup>5</sup> Testimony that the plaintiffs do not recall signing these documents is insufficient. It is well-established that failure to read a contract does not excuse a party from its binding formation. Indeed, the Third Circuit has held that “[c]ontracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood.” Schwartz v. Comcast Corp., 256 Fed. Appx. 515, 520 (3d. Cir. 2007) (internal citations omitted); see also Federowicz v. Snap-On Tools Corp., No. 91-3425, 1992 WL 55723, at \*4 (E.D. Pa. Mar. 12, 1992); Al-Thani v. Wells Fargo & Co., No. 8-1745, 2009 WL 55442, at \*6 (N.D. Cal. Jan. 7, 2009).

record in front of the Court includes copies of most of the relevant documents, and the Court sees no need to review the originals. See Fed. R. Evid. 1003 ("A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity.") (emphasis added); see also Clerk v. ACE Cash Express, Inc., No. 09-5117, 2010 WL 364450, at \*2, n.2 (E.D. Pa. Jan. 29, 2010) ("[T]he fact that these documents have been lost or destroyed does not prevent their enforcement.").

Because the Court holds that there is no issue of genuine fact as to the authenticity of the services agreements, the Court must also consider whether the instant dispute is within the scope of the arbitration provision. The Court holds that there is no issue of genuine fact that the arbitration provisions were triggered by the dispute in the instant case. The provision includes "any controversy between the Adviser and the Client arising out of Adviser business or this agreement." See Def. SunTrust Mot., exh. B, ¶ 22. The complaint filed by the plaintiffs alleges a number of breaches of duty, including that the defendants violated contractual covenants of good faith and fair dealing, as well as S.E.C. violations that purported to occur during the course of Mr. Crafton's financial relationship

with the plaintiffs. Compl. ¶ 111; id. at 64. Without any valid argument to the contrary, such allegations fall within the realm of "Adviser business," and, accordingly, the Court grants the Defendants' motions to compel arbitration in the manner set forth in their respective services agreements.

An appropriate order shall issue separately.